IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/02/2003

CORAM

THE HONOURABLE MR. JUSTICE M. KARPAGAVINAYAGAM
AND
THE HONOURABLE MR. JUSTICE A.K. RAJAN

CRIMINAL APPEAL No. 29 of 1999

Vijayakumar .. Appellant

-Vs-

The Inspector of Police,
B1 Police Station,
Ootacamund. .. Respondent

Criminal Appeal against the judgement dated 14.8.1997 made in S. C. No. 1 of 1997 on the file of the District and Sessions Judge, Ootacamund.

For Appellant : Mr. A.P. Muthupandian and
Mr. C. Deivasigamani

For Respondent : Mr. E. Raja
Addl. Public Prosecutor

:JUDGMENT

(Judgment of the Court was delivered by M. KARPAGAVINAYAGAM, J.)

Vijayakumar, the appellant herein was convicted for the offences under Sections 302 and 392 I.P.C. and sentenced to undergo life imprisonment under Section 302 I.P.C. and seven years rigorous imprisonment and to pay a fine of Rs.500/- under Section 392 I.P.C. Challenging the same, this appeal has been filed.

2. The case of the prosecution in brief is as follows:-

i) On 11/12.9.1994 at about 1.00 a.m., the accused Vijayakumar accompanied by the deceased Rajathi, came to Ooty and requested the Manager of Sabari Lodge, P.W.1 to allot a room. Accordingly, the accused was allotted room No. 15. The accused wrote his name and address as " Mani", S/o Palaniappan, 11/10, Maniakkara Street, Thiruppur. P.W.1, the Manager of the lodge took both the accused and the deceased to room No.15 at the first floor and opened the door and allowed them to occupy the room. On 12.9.1994 early morning at about 6.30 a.m., the accused alone came down and informed P.W.1 that he was going out to

have tea. Till 12 noon, he did not turn up. This was informed by P.W.1 to P.W.2 Premkumar, the owner of the lodge. On suspicion, both P.Ws. 1 and 2 went to room No.15 and knocked the door. There was no response. Therefore, P.W.1 peeped through the gap between the door and the floor and found water on the floor of the room. Therefore, with the help of master key, they opened the door. To their shock and surprise, they found dead body of the deceased with cut injuries underneath the cot.

ii) P.W.1 rushed to the police station and gave complaint Ex.P1 to P.W.21 Head Constable. Ex.P40 is the F.I.R. A case was registered under Section 302 I.P.C. On receipt of the message, P.W.24 Inspector of Police came to the scene of occurrence at about 1.15 p.m., prepared Ex.P3 observation mahazar and Ex.P42 rough sketch. He conducted inquest over the dead body of the deceased between 2.45 p.m. and 5.1 5 p.m. Ex.P43 is the inquest report. He recovered M.O.2 blood stained cotton pillow, M.O.3 blood stained ladies slippers and M.O.4 empty canvass bag. He also recovered M.O.5 sari, M.O.6 black colour bra, M.O.7 red colour jacket, M.Os. 8 and 9 eversilver tumblers and M.O.1 0 empty brandy bottle under mahazar Ex.P5. This was attested by P.W.5, the mahazar witness. Thereafter, the dead body was sent for post-mortem through a requisition.

iii) P.W.12 Doctor commenced post-mortem on the dead body of the deceased on 13.9.94 at 12 noon and noticed 8 cut injuries and a small contusion. P.W.12 Doctor issued Ex.P18 post-mortem certificate and opined that the deceased would appear to have died of multiple injuries. Final opinion was given in Ex.P19 stating that the deceased would appear to have died of shock and haemorrhage due to multiple injuries.

iv) In order to verify the identity of the deceased, P.W.21 Inspector of Police gave advertisement in newspapers. In the meantime, he seized registers of the Sabari Lodge relating to the period from 29.8.1994 to 12.9.1994. P.W.24 tried to get the real address of the said Mani by sending a team to verify his address on 14.9.1994. P.W.24 came to know that the address furnished by th e accused in the lodge register was false.

v) On 18.9.1994, P.W.5 Vijayakumar, the son of the deceased on noticing the photo of the deceased in newspapers, approached P.W.24 and then P.W.24 took him to the mortuary where he identified the deceased as his mother's dead body. P.W.24 went to the house of the deceased and examined P.Ws.5 and 6, the son and mother of the deceased respectively and seized M.O.11 Godrej hair dye bottle. After getting correct particulars with regard to identity of the deceased, he tried to get a clue with regard to identity of the accused, who involved in the murder. Then, on verification with the registers, he came to know that the handwriting of "Mani" and the handwriting of one Vijayakumar, the accused, who stayed in the lodge on earlier occasions, were identical. After taking down the address in the register, he proceeded to the residential address of the said Vijayakumar at Kuniamuthur, Coimbatore and ascertained that the said Vijayakumar left the house on 11.9.1994 and returned home on 12.9.1994 and thereafter, he was absconding. On entertaining a strong suspicion against him, P. W.24 took effective steps to arrest him.

vi) On 27.10.1994, he came to know that the accused Vijayakumar voluntarily surrendered before the learned Judicial Magistrate No.II, Coimbatore. Then, he made a requisition to the Chief Judicial Magistrate, Coimbatore to arrange for identification parade for enabling P.W.1 to identify the accused. Accordingly, the identification parade was arranged by P.W.20 Judicial Magistrate, Coonoor, and the same was held on 1.11.1994. P.W.1 identified the accused in the parade 4 times correctly. Thereafter, he obtained an order from the learned Judicial Magistrate permitting him to take finger prints and the specimen signatures of the accused and the same was done on 3.11.1994 in the presence of the Jail Superintendent. The finger prints and the specimen signatures were sent for comparison to the Finger Print Expert. On 4.11.1994, he applied for police custody of the accused and after obtaining the police custody on 5.11.1994, P.W.24 obtained his confession. The accused took P.W.24 to Vedal on 6.11.1994 at 4.30 p.m. and on the basis of his confession, P.W.24 seized M.O.1 key and M.O.16 knife.

Vii) Then, on 7.11.1994, P.W.24 took the accused to Coimbatore where the accused identified P.W.9 Sampathkumar to whom he sold the jewels that belonged to the deceased. When P.W.9 was interrogated, he admitted having purchased the jewels from the accused on 10.10.1994. Then, M.O.12 ring, M.O.13 ear stud, M.O.14 twisted gold chain and M.O.1 5 wheat cut chain were recovered from P.W.9.

viii) Thereafter, the F.I.R. was altered into one under Sections 302 and 380 I.P.C. and the Express F.I.R. was sent to the concerned Judicial Magistrate. Then, the relatives of the deceased were called and asked to identify the jewels and accordingly, they identified the jewels as that of the deceased.

ix) In the meantime, P.W.24 obtained the report from P.W.16 Finger Print Expert stating that the finger prints of the accused tallied with the finger prints contained in M.Os. 8 and 9 tumblers and M.O.10 brandy bottle recovered from the scene of occurrence. The specimen signatures obtained from the accused were also sent to P.W.14 Handwriting Expert to compare the signatures and handwritings found in the registers. Accordingly, P.W.14 sent the report stating that the handwriting of the accused tallied with the handwriting of Vijayakumar and "Mani" which were entered in the respective pages of the registers.

x) After completion of the investigation, P.W.24 filed the charge sheet against the accused for the offences under Sections 302 and 380 of I.P.C. However, the charges have been framed by the trial Court for the offences under Sections 302 and 392 I.P.C.

3. During the course of trial, on behalf of the prosecution, P.Ws.1 to 24 were examined, Exs. P1 to P47 were filed and M.Os.1 to 20 were marked.

4. When the accused was questioned under Section 313 Cr.P.C., he denied having gone to the lodge and committed the offence.

5. The trial Court, on an appraisal of the evidence available on record, found the accused guilty of the offences under Sections 302 and 3 92 I.P.C. and sentenced him thereunder. Challenging the same, this appeal has been filed.

6. Mr. A.P. Muthupandian, representing Mr.C.Deivasigamani, counsel on record would take us through the entire evidence and contend that the evidence available on record is not only unreliable, but also insufficient to base the conviction. He would point out various infirmities to establish that a false case has been foisted against the accused. In brief, it is contended by Mr. Muthupandian, learned counsel for the accused that the accused is entitled to be given "the benefit of doubt" and as such, the appeal has to be allowed.

7. In reply to the said submissions, the learned Additional Public Prosecutor, while justifying the reasonings given by the trial Court for convicting the accused, would contend that there are formidable circumstantial evidence collected by the prosecuting agency which are sufficient to hold that the accused is guilty of the offences and as such, the conviction and sentence imposed by the trial Court are perfectly legal.

8. By way of making further submissions, Mr.C.Deivasigamani, who is present before this Court today, on behalf of Mr.A.P.Muthupandian, who argued earlier on the last hearing, would submit that the entire evidence adduced by the prosecution against the accused is fabricated, that the evidence adduced by the Finger Print Expert cannot be accepted and that the lodge registers Exs.P2, P6 and P8 cannot be relied upon as P.W.1 did not put his signature as the Manager of the lodge.

9. We have carefully considered the submissions of Mr.Muthupandian, who initially argued on behalf of the accused and Mr.C.Deivasigamani, who subsequently made further submissions and also the submissions made by the learned Additional Public Prosecutor. We have also gone through the records. We have given our thoughtful consideration to the rival contentions.

10. Admittedly, there is no direct evidence. The entire case rests on the circumstantial evidence.

11. It is settled law that the Court must be satisfied that the circumstances from which the guilt is drawn against the accused have been clearly established by unimpeachable evidence and those circumstances should form a complete chain without any missing link and they should unerringly point to the guilt of the accused.

12. In the light of the above principles of law laid down by this Court as well as the Supreme Court, let us analyse the circumstances projected by the prosecution. The circumstances relied upon by the prosecution are as follows:-

(i) P.W.1, the Manager of the lodge, allotted room No.15 to the accused, claiming himself as 'Mani' accompanied by the deceased on 11/1

2.9.1994 at about 1.00 a.m. Early morning at about 6.30 a.m., the accused alone left the lodge informing P.W.1 that he was going to have tea. Since the accused did not turn up till 12 'O' clock, P.Ws. 1 and 2, while opening the room on suspicion, found the deceased lying dead with cut injuries.

(ii) The accused on earlier occasions, stayed in the lodge in the name of Vijayakumar. On verification, P.W.24, the Inspector of Police found that the writings of Vijayakumar and the entries made on 12.9.1 994 as "Mani" are identical. The address given on 12.9.1994 was found to be bogus. Then, he wanted to verify the address given by Vijayakumar. When P.W.24 tried to locate Vijayakumar at the address given in the register, the said Vijayakumar was found absconding from 12.9.1 994 onwards.

(iii) On 25.10.1994, the accused surrendered before the Court. As requested by P.W.24, Inspector of Police, identification parade was held in the presence of P.W.20 Judicial Magistrate on 1.11.1994. P.W.1 identified the accused for four times in the parade.
(iv) As per the order obtained from the learned Judicial Magistrate, finger prints of the accused were taken in the presence of Jail Superintendent on 3.11.1994 and those finger prints were sent to P.W.1 6 Finger Print Expert for comparison. On comparison, P.W.16 gave an opinion in Ex.P27 that the finger prints of the accused tallied with the finger prints contained in M.Os.8 and 9 eversilver tumblers and M.O.10 brandy bottle recovered from the scene place.
(v) The specimen signatures of the accused also were sent to P.W.14 Handwriting Expert for comparing the handwriting of the accused with that of the entries made by the accused on 12.9.1994 in the name of "Mani" and also on earlier occasions in the e of Vijayakumar. P.W.14 gave Ex.P22 report stating that on comparison, he found that the handwritings found in those entries of the registers were identical with the specimen signatures of the accused.

(vi) P.W.24 obtained police custody of the accused on 4.11.1994. On his confession, M.O.1 key of the lodge room and M.O.16 knife were recovered. Further, the accused identified P.W.9 Sampathkumar to whom the jewels of the deceased were sold. On 7.11.1994, M.O.12 ring, M.O.13 ear stud, M.O.14 wheat-cut gold chain and M.O.15 twisted gold chain were recovered from P.W.9 and the same were identified by the relatives of the deceased as that of the deceased.

(vii) When the learned Judicial Magistrate questioned the accused on the date of identification parade, the accused told the learned Magistrate that he knew P.W.1 earlier as the Manager of lodge and hence, he correctly identified him in the parade. When the accused was questioned under Section 313 Cr.P.C., he, bluntly stated that he had never gone to the said lodge. He never gave any explanation as to how he came into the possession of the key of the room and the jewels of the deceased. That apart, he admitted that the finger prints and the specimen signatures were obtained from him in the jail.

13. If the circumstances mentioned above are held to be reliable and acceptable, then there is no difficulty in holding that the accused and the

accused alone had committed this grave murder for gain. Let us now analyse one by one.

14. The first circumstance is the evidence of P.W.1, who speaks about the allotment of room No.15 to the accused accompanied by the deceased Rajathi and the fact that the accused left the lodge alone in the early morning at 6.30 a.m. P.W.1, is the Manager of the lodge, who gave Ex.P1 complaint to P.W.21 Head Constable. In Ex.P1, he clearly stated that on 11/12.9.1994 at 1.00 a.m., both the accused and the deceased came and on their request, room No.15 was allotted to them and next day morning, the accused alone went out under the pretext of taking tea outside and since he did not turn up till 12.00 noon, on suspicion, P.Ws. 1 and 2 opened the door with the master key and found the dead body of the deceased underneath the cot with cut injuries. It has been specifically stated in Ex.P1 that he knew the identity of accused very well. (mtid vdf;F ed;whf milahsk; bjhpa[k;)/ It is not in dispute that the death of the deceased is due to homicidal violence as P.W.12 Doctor would state in Exs.P.18 and 19 that the deceased died due to multiple injuries sustained by her.

15. It is the specific evidence of P.W.1 that he was working as Manager on the date of occurrence and he only allotted the room to the accused. Though the signatures of P.W.1 have not been found in the ledgers, there cannot be any dispute that the ledgers marked in this case have been maintained in the said lodge. Furthermore, no question has been put to P.W.1 that he was not working as Manager in the said lodge on the date of occurrence. Apparently, there is no challenge in the cross-examination of the evidence of P.W.1 relating to the authenticity of registers maintained in the lodge and to the fact that P.W.1 was working as Manager of the lodge on that date. If he was not Manager on that date, there was no necessity for P.W.1 to give complaint Ex.P1 to P.W.21, the Head Constable. Therefore, the first circumstance, in our view, is quite reliable and acceptable. Consequently, the argument advanced by the learned counsel for the appellant that the authenticity of Exs.P2, P6 and P8 cannot be relied upon has to be rejected.

16. Though P.W.24, the Investigating Officer was able to get information with regard to identity of the deceased through P.Ws.5 and 6, who are the son and mother of the deceased respectively, within a few days, he was not able to get any clue with regard to identity of the accused involved in the murder. Fortunately, P.W.24, Inspector of Police, on verification of the name and address given by the accused as "Mani" on 12.9.1994, found that the address was bogus. When he further interrogated P.W.1, he stated that the accused earlier came and stayed in the lodge. Therefore, P.W.24 wanted to verify the earlier registers for the similar entries made by the accused. Luckily, P.W.24 was able to locate Ex.P8, the other register, wherein number of entries were made. On comparison, P.W.24 found that the accused had stayed in the name of Vijayakumar on several occasions. When he compared those writings found in the entry on 12.9.1994, he found that the writings of Vijayakumar on the earlier occasions and the writings of Mani on 12.9.1994 were identical. Therefore, he entertained a suspicion on the said Vijayakumar. Consequently, P.W.24 spread the net on Vijayakumar by sending a team to locate Vijayakumar. He came to know that the said Vijayakumar left

his residence on 11.9.1994 and came back on 12.9.1994 morning and thereafter, he was absconding. This additional factor gave a strong suspicion against him and therefore, P.W.24 took effective steps for arresting the said Vijayakumar. The accused Vijayakumar on noticing the efforts being taken by P.W.24, Inspector of Police, voluntarily surrendered before P.W.19 Judicial Magistrate, Coimbatore, on 25.10.1994. This information was conveyed to P.W.24. Therefore, he took immediate arrangements for filing a requisition to the Judicial Magistrate concerned to make arrangements for identification parade.

17. With regard to this aspect of the evidence adduced by P.W.24, there is no challenge in the cross-examination. As a matter of fact, there is no explanation from the accused either by putting a suggestion or by giving answers during the questioning under Section 313 Cr.P.C. as to where he was on those days and what made him to surrender before the Judicial Magistrate. Hence, this second circumstance is a very strong piece against the accused.
18. The third circumstance is the identification parade. The accused surrendered on 25.10.1994 before P.W.19 Judicial Magistrate, Coimbatore. On coming to know about this, P.W.24 made a requisition to arrange for identification parade. Accordingly, On 1.11.1994, P.W.20 Judicial Magistrate conducted the identification parade after observing all the formalities. P.W.1 identified the accused correctly for four times. This aspect of evidence has been spoken to by P.W.24, the Investigating Officer and P.W.20 Judicial Magistrate. No challenge has been made with regard to the formalities observed in the conduct of identification parade. After the parade was over, the accused was questioned by P.W.20 Judicial Magistrate, as to whether he could say anything about the parade. The accused categorically stated before the learned Judicial Magistrate that since the accused was earlier known to P.W.1, who was the Manager of Sabari Lodge, P.W.1 was able to identify him correctly. Therefore, this circumstance also, in our view, has been satisfactorily established.

19. The next circumstance is that the finger prints and the specimen signatures of the accused tallied with the finger prints in the articles recovered from the scene of occurrence and the writings made in the registers of the lodge. It is the evidence of P.W.24 that he obtained the order from the Magistrate, and in the jail premises, in the presence of the Jail Superintendent, specimen signatures and finger prints were obtained. Even on the date of occurrence, i.e. on 12.9 .1994, P.W.24, Investigating Officer, came to the scene of occurrence along with P.W.16 Finger Print Expert and took the finger prints in M.Os. 8 and 9 eversilver tumblers and M.O.10 brandy bottle. After taking finger prints from the accused, they were sent for comparison to P.W.16 Finger Print Expert. After comparison, he gave Ex.P27 report that finger prints of the accused tallied with the finger prints found in M.Os.8,9 and 10 recovered from the scene. Besides that, the specimen signatures obtained from the accused were sent to P.W.14 along with Exs.P2, P6 and P8 registers. After comparison, P.W.14 also gave opinion in Ex.P22 stating that the specimen signatures of the accused were found tallied with the writings found in Exs.P2, P6 and P8. Admittedly, there is no challenge in the cross-examination of P.Ws. 14 and 16 with regard to this aspect of evidence. In fact, when the accused was questioned under Section 313 Cr.P.C.,

while answering to question No.36, he would specifically admit that the specimen signatures and the finger prints were taken from him at the jail premises. So, in the absence of challenge to the evidence of P.Ws.14, 16 and 24, it cannot be bluntly stated by the counsel for the appellant that these documents have been fabricated. Therefore, in our view, this circumstance also has been properly and satisfactorily explained by the prosecution.

20. On 4.11.1994, police custody of the accused was obtained by P. W.24, the Investigating Officer. On the confession of the accused, M.O.1 room key of the lodge and M.O.16 knife were recovered from the accused on 6.11.1994. P.W.12 Doctor would state that the injuries found on the body of the deceased would have been caused by M.O.16 knife. P.Ws. 1 and 2, the Manager and the owner of the lodge respectively identified M.O.1 as the key that belonged to the room No.15 of that lodge. Apart from that, on 7.11.1994, the accused gave further confession stating that he would point out the person to whom he sold the jewels belonged to the deceased. Accordingly, P.W.24 was taken to P.W.9 Sampathkumar. When P.W.9 Sampathkumar was interrogated by P. W.24, he admitted having purchased the jewels on 10.10.1994 from the accused. Then, he handed over M.O.12 ring, M.O.13 ear stud, M.O.14 wheat cut chain and M.O.15 twisted gold chain to P.W.24, who in turn recovered the same under Ex.P.14 mazahar. P.Ws. 5 and 6 were summoned to the Police Station for identifying the jewels. Accordingly, they came and identified the same as that of the deceased.

21. P.W.8 mahazar witness and P.W.24 Investigating Officer both would speak to the recovery of M.O.1 room key and M.O.16 knife from the accused. Similarly, P.W.9 purchaser of the jewels and P.W.24 Inspector of Police would speak about the recovery of stolen jewels from P. W.9 to whom the accused sold the jewels.

22. As indicated above, the jewels recovered from P.W.9 were identified by the witnesses, P.Ws.5 and 6 as that of the deceased and the same were recovered from P.W.9 on being pointed out by the accused and P.W.9 also would state that the accused only came and sold the jewels on 10.10.1994 to him. Thus, the recovery of jewels from P.W. 9 was only at the instance of the accused. On going through the evidence of P.W.9, it is clear that nothing has been elicited in his crossexamination that he speaks falsehood against the accused. Hence, this circumstance also has been satisfactorily proved.

23. The next circumstance would be giving a false answer in 313 questioning and also failure to give explanation for the possession of the jewels. According to the prosecution, the occurrence took place on 12.9.1994 between 1.00 a.m. and 6.30 a.m. After initial enquiry, P.W.24 entertained a suspicion against the accused Vijayakumar and located his address. When he enquired the people in his house, he came to know that the accused, who came back on 12.9.1994 morning, was missing thereafter. Only on 25.10.1994, the accused surrendered before the Court. Admittedly, the accused has not given any explanation when he was questioned under Section 313 Cr.P.C. as to where was he in those days. Further, he gave an answer to question No.57 that he never went to the lodge and stayed there. He also answered to question

Nos.2,3 and 4 that he did not go to the lodge on that date. These answers are quite contradictory to the statement made by him to P.W.20 Judicial Magistrate on 1.11.1994 during the course of identification parade. He stated to P.W.20 that he knew P.W.1 as lodge Manager earlier and so, he correctly identified him. Having stated so before the Judicial Magistrate P.W.20, he did not choose to stick to the said statement. On the contrary, when he was questioned under Section 313 Cr.P.C., to the question No.57, he stated that he had never gone to the said lodge. This shows that his answer is false. So, reading of answers given by the accused in Section 313 Cr.P.C. questioning, would clearly indicate that he did not choose to give any explanation for possession of the jewels which were recovered at his instance and also did not give any explanation as to why he alone left the lodge leaving the deceased in the room.

24. The Apex Court would state periodically that in a case of circumstantial evidence when the accused fails to give explanation for the established circumstances and offers an explanation which is found to be not true, then the same are to be considered as an additional link to the chain of circumstances to complete the chain. A false answer offered by the accused when his attention was drawn to a circumstance, renders that circumstance capable of inculpating him. In such a situation, the false answer in 313 questioning can also be counted as providing a missing link for completing the chain. This has been laid down in SWAPAN PATRA v. STATE OF WEST BENGAL (1999 (9) S.C.C. 242), STATE OF MAHARASHTRA v. SURESH (2000 (1) S.C.C. 471), KULDEEP SINGH AND OTHERS V. STATE OF RAJASTHAN, (2000 (5) JT (SC) 161) and ANTHONY D'SOUZA v. STATE OF KARNATAKA (2003 CRI.L.J.434).

25. In short, two important things, which have to be noted in this context are these. Firstly, the accused did not choose to challenge the materials available on record which are incriminating against the accused. Nextly, the accused gave false answers in 313 questioning and also failed to give explanation with regard to possession of jewels. The evidence of P.W1, which is quite clear, in our view, is reliable and trustworthy. The accused accompanied by the deceased came in the midnight. Since he was a regular customer, P.W.1 allotted the room. Next day morning, the accused alone left the lodge at about 6 .30 a.m. Since the accused did not turn up till 12 O' clock, P.Ws. 1 and 2, on noticing that there was no response from the room, opened the lock of the room through the master key and found the dead body of the deceased with cut injuries under the cot. Furthermore, M.O.1 key which was recovered on the confession of the accused was identified by P.Ws. 1 and 2 as the key of the room No.15 of the lodge. This evidence is also not challenged. Apart from that , the accused gave an answer in Section 313 Cr.P.C. questioning that he had never gone to the lodge and on the other hand, he himself admitted before P.W.20 Judicial Magistrate that he knew P.W.1 as the Manager of the lodge. That apart, this court could notice that the accused earlier stayed in the lodge in his original name as Vijayakumar and only on 12.9.19 94 i.e. the fateful day, he stayed along with the deceased in the false name "Mani". P.W.14's evidence in Ex.P22 Finger Print Expert's report would clearly indicate that the accused only stayed in the name of "Mani" along with the deceased and falsely gave his name as " Mani".

26. Thus, the prosecution had established that the accused alone stayed with the deceased on that particular night. When once this is established, the onus is on the accused to show as to what had happened in the said night inside the room. Since this fact is in the exclusive knowledge of the accused alone, he is bound to explain the same and discharge his burden as contemplated under Section 106 of the Indian Evidence Act. Admittedly, this is not done.

27. Secondly, as indicated above, the prosecution has also established that the jewels belonged to the deceased were recovered from P.W.9 only at the instance of the accused. This aspect of the evidence has been spoken to by P.Ws. 9 and 24. This evidence has never been challenged in the cross-examination. When once the prosecution had established that the accused came into possession of the jewels, which were identified as that of the deceased, it is for the accused to explain as to how he got the possession of the jewels stolen from the body of the deceased. Admittedly, there is no explanation. Consequently, the presumption under Section 114-A of the Act will raise, which has not been rebutted.

28. So, all the circumstances analysed above, in our view, would form the complete chain without any missing link pointing to the guilt of the accused and the chain of circumstances as referred to above in the light of the law laid down by this Court as well as the Apex Court unerringly lead to only one conclusion that the appellant/ accused alone had committed the gruesome murder of the deceased for gain. Therefore, the conviction and sentence imposed upon the appellant are legal and the appeal consequently is liable to be dismissed.

29. Before parting with this case, we are to record our note of anguish over the conduct of Mr.C.Deivasigamani, the counsel on record for the accused. When the matter was taken up for final disposal, Mr. A.P.Muthupandian argued the entire matter on behalf of the accused by representing Mr.C.Deivasigamani, the counsel on record. The matter was adjourned to next hearing date for the Additional Public Prosecutor to reply. On the next hearing, when the matter was taken up, Mr. Muthupandian was not present. Mr.C.Deivasigamani, who is the counsel on record, would submit that the said Muthupandian was not in station and therefore, he requested for permission to make further submission after reply by the Additional Public Prosecutor. Accordingly, we heard the Additional Public Prosecutor and then gave permission to Mr. C.Deivasigamani to make further submission by way of reply to the submissions of the Addtional Public Prosecutor. As he was not having bundle with him, this Court permitted him to use the additional set available in the Court. Even when he began his argument, Mr.C. Deivasigamani raised his voice and stated that the entire records have been falsely created against the accused by the investigating agency. When his gestures and raised tone irritated this Bench, we asked him to use the polite language without raising his voice. Despite this, Mr.C. Deivasigamani raised his voice further and stated that he would speak only in that way and as such, he cannot change his routine voice. We found that his tone was not only with a raised voice, but also with the threatening tinge. However, we restrained ourselves from taking any action against him as we wanted to give opportunity to him to

make his submission by way of reply in the interest of the appellant/ accused. Then, he continued to argue the matter in the same threatening tone by raising his voice causing mental disturbance to this Court. Thus, this Court has felt that Mr.C.Deivasigamani, the counsel has misbehaved without giving any respect to the feeling of this Court. As such, this Court is constrained to express displeasure over the conduct of Mr.C.Deivasigamani, the counsel, which is to be termed as obnoxious. Though we initially thought of taking appropriate action against the said counsel at least by imposing some costs on him over the behaviour before this Court, we refrained ourselves from doing the same with the fond hope that the counsel would not behave in the nauseating manner at least in future. While recording this note of anguish in the judgment over the conduct of Mr.C.Deivasigamani, we are constrained to give a warning to the said counsel to behave properly in future or else, he would be dealt with suitably.

30. While concluding this judgment, we are to record our note of appreciation over prompt and efficient investigation conducted by P.W.2 4 Muthamizhmani, the Inspector of Police. On going through the records, we could notice that he took all steps promptly and effectively to pull out the truth. But for his effective steps in collecting the materials even in the form of minute details, the appellant/accused would not have been brought to book. So, we record our full appreciation for the effective investigation conducted by P.W.24, the Inspector of Police. We further recommend for suitable reward for the same. The Registry is directed to send a copy of this judgment to the Director General of Police to enable him to give suitable direction to give award to the Investigating Officer.

31. For the foregoing reasons, the appeal is dismissed confirming the conviction and sentence imposed on the appellant /accused.

Index: Yes
Internet: Yes
ra/mam

To
1. The District and Sessions Judge,
Ootacamund.

2. The Superintendent,
Central Prison, Coimbatore.

3. The Public Prosecutor,
High Court, Madras.

4. The Inspector of Police,
B1 Police Station, Ootacamund.

5. The Collector, Ootacamund.

6. The Director General of Police,
Chennai.